

**SUMMARIZED MINUTES
SCOTTSDALE CITY COUNCIL
MONDAY, OCTOBER 18, 2004**

APPROVED



**CITY HALL KIVA
3939 N. DRINKWATER BOULEVARD
SCOTTSDALE, AZ 85251**

CALL TO ORDER

Mayor Manross called to order a Regular Meeting of the Scottsdale City Council on Monday, October 18, 2004 in the Kiva, City Hall, at 5:07 P.M.

ROLL CALL

Present: Mayor Mary Manross
Vice Mayor Robert Littlefield
Council Members Betty Drake, Wayne Ecton,
Ron McCullagh, W.J. "Jim" Lane, and Kevin Osterman

Also Present: City Manager Jan Dolan
City Attorney Joseph Bertoldo
City Clerk Carolyn Jagger

PLEDGE OF ALLEGIANCE

- Councilman Lane

INVOCATION

- Jack Sylvester, Brotherhood of Man

PRESENTATIONS/INFORMATION UPDATES

- The City's Human Services Department was recognized for the award they recently received from the Internal Revenue Service for their involvement in the Earned Income Tax Credit Program.

BOARDS, COMMISSIONS AND TASK FORCES

Development Review Board (1) – Kevin O'Neill

Loss Trust Fund Board (1) - Barbara Gatlin

Neighborhood Enhancement Commission (2) – Christine Schild and John Schultz

PUBLIC COMMENT - None

MINUTES

REGULAR MEETINGS

September 21, 2004

October 5, 2004

COUNCILMEMBER DRAKE MOVED TO APPROVE THE REGULAR MEETING MINUTES FOR SEPTEMBER 21, 2004 AND OCTOBER 5, 2004. COUNCILMAN OSTERMAN SECONDED THE MOTION, WHICH CARRIED 7/0.

CONSENT AGENDA

1. Spinato's Pizza Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) liquor license for a location that previously operated as Tomato Shack.

Location: 11108 N. Frank Lloyd Wright Boulevard

Reference: 64-LL-2004

Staff Contacts: Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Bob Bushfield, Plan Review and Permit Services Director, 480-312-7096, bbushfield@scottsdaleaz.gov

2. Eckerd Drugs #7839 Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 10 (beer & wine store) liquor license for an existing drug store.

Location: 32331 N. Scottsdale Road

Reference: 66-LL-2004

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Bob Bushfield, Plan Review and Permit Services Director, 480-312-7096, bbushfield@scottsdaleaz.gov

3. Lecca Baffi Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) liquor license for a location currently operating with an interim permit.

Location: 9719 N. Hayden Road

Reference: 67-LL-2004

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Bob Bushfield, Plan Review and Permit Services Director, 480-312-7096, bbushfield@scottsdaleaz.gov

4. Quench Fine Wines Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a distributor location transfer of a series 4 (wholesaler) liquor license.

Location: 9319 N. 94th Way, Ste. 600

Reference: 68-LL-2004

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Bob Bushfield, Plan Review and Permit Services Director, 480-312-7096, bbushfield@scottsdaleaz.gov

5. Apple Café Extension of Premises

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for an extension of premises to enclose the existing patio with pipe rail and latching gates.

Location: 15040 N. Northsight Boulevard

Reference: 32-EX-2004

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Bob Bushfield, Plan Review/Permit Services Director, 480-312-7096, bbushfield@scottsdaleaz.gov

6. DC Ranch Parcel 6.9 Final Plat Phase 3

Request: Consider final plat approval for twelve (12), single-family residential lots on a 52.98+/- acre parcel.

Location: Intersection of Windgate Pass and Saguaro Canyon Trail

Reference: 4-PP-2004

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov; Tim Curtis, Project Coordination Manager, 480-312-4210, tcurtis@scottsdaleaz.gov

7. Ironwood Square Replat

Request: Consider approval of a replat on a .93-acre parcel.

Location: Northwest corner of 96th Street and Mountain View Road

Reference: 25-PP-2002#3

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov; Suzanne Colver, Senior Planner, 480-312-7087, scolver@scottsdaleaz.gov

8. Boldero Grande Final Plat

Request: Consider approval of a Final Plat for eight (8) residential lots with amended development standards on a 10-acre parcel.

Location: Northeast corner of Hayden Road and Smokehouse Trail Alignment

Reference: 20-PP-2003

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov; Al Ward, Senior Planner, 480-312-7067, award@scottsdaleaz.gov

9. Removed from the Consent Agenda for separate discussion. See page 5.

10. Enterprise Document Management Contract

Request: Authorize Contract Modification No. 2004-013A-COS to Enterprise Document Management, Contract No. 2004-013-COS with 5280 Solutions, Inc. of Highlands Ranch, Colorado. This contract modification extends Enterprise Document Management to the City Attorney's Civil and Litigation divisions. It includes licensing, conversion, implementation services, and travel expenses. It modifies the following three agreements within the original contract: Services Agreement, Software License Agreement, and Maintenance/Support Agreement. The project total for this modification is \$86,595.

Staff Contact(s): Brad Hartig, Chief Information Officer, 480-312-7615, bhartig@scottsdaleaz.gov; Rich Peterson, Information Systems, 480-312-7021, rpeterson@scottsdaleaz.gov; Sue Mitrison, City Attorney's Office, 480-312-7937, smitrison@scottsdaleaz.gov; Judy Silverthorn, Information Systems, 480-312-7879, jsilverthorn@scottsdaleaz.gov

11. Construction Bid Award for the Intelligent Transportation Systems (ITS) Camera Project

Request: Authorize Construction Bid Award No. 04PB092 to CS Construction, the lowest responsive bidder, at their lump sum bid of \$1,821,243 for the Scottsdale Hardwire ITS Camera Project.

Related Policies, References: City Council approved design contract No. 2002-092-COS for installation of thirty-three (33) Closed Circuit Television Cameras on June 18, 2002.

Staff Contact(s): Al Dreska, Municipal Services General Manager, 480-312-5555, adreska@scottsdaleaz.gov; Annette Grove, Sr. Project Manager, 480-312-2399, agrove@scottsdaleaz.gov; Bruce Dressel, ITS Manager, 480-312-2358, bdressel@scottsdaleaz.gov

12. Architectural Services Contract for the design of One Civic Center Interior Renovations

Request: Authorize Architectural Services Contract No. 2004-141-COS with Jones Studio, Inc., in the amount of \$94,218 for the design of interior renovations for One Civic Center.

Staff Contact(s): Al Dreska, Municipal Services General Manager, 480-312-5555, adreska@scottsdaleaz.gov; Thyra Ryden-Diaz, P.E., Project Manager, 480-312-4327, tryden-diaz@scottsdaleaz.gov

13. Intergovernmental Agreement with Salt River Pima-Maricopa Indian Community to Fund Programs and Local Activities

Request: Consider Resolution No. 6562 authorizing the Mayor to execute Intergovernmental Agreement No. 2004-145-COS between the Salt River Pima-Maricopa Indian Community and the City of Scottsdale to accept and appropriate \$595,500 to fund programs and local activities with a portion of the community's local revenue sharing contribution pursuant to A.R.S. Section 5-601 (H)(4).

Related Policies, References: This agreement is in accordance with Proposition 202, and ARS 5-601 related to distribution of a share of tribal gaming revenues for public benefit.

Staff Contact(s): Steve Olson, Government Relations Director, 312-2423, solson@scottsdaleaz.gov; Connie James, Human Services Director, 312-2598, cojames@scottsdaleaz.gov

14. Technical Modification to Legal Description in Valley Ho Agreement

Request: Adopt Resolution No. 6564 approving Agreement Amendment No. 2003-175A-COS to replace the legal description in Agreement No. 2003-175-COS for the Hotel Valley Ho property at 6850 E. Main Street and rerecord the agreement with the amended legal description.

Related Policies, References: Resolution No. 6399, adopted November 4, 2003 by City Council, authorized Agreement No. 2003-175-COS with MSR Properties, LLC.

Staff Contact(s): Robert J. Cafarella, Preservation Director, 480-312-2577, rcafarella@scottsdaleaz.gov

COUNCILMAN OSTERMAN MOVED TO APPROVE CONSENT ITEMS 1-14 EXCLUDING ITEM 9. COUNCILMAN LANE SECONDED THE MOTION, WHICH CARRIED 7/0.

REMOVED FROM CONSENT AGENDA FOR SEPARATE DISCUSSION

9. Appointment of Election Boards for the November 2, 2004 Special Franchise Election

Request: Adopt Resolution No. 6555 authorizing the appointment of the Election Boards for the November 2, 2004 Special Franchise Election.

Related Policies, References:

- A.R.S. 9-825 requires the governing body to appoint election board members from the qualified electors of the municipality.
- Article 12, Section 1, of the Scottsdale City Charter requires the applicant to pay all franchise election expenses.

Staff Contact: Carolyn Jagger, City Clerk, 480-312-2411, cjagger@scottsdaleaz.gov

Vice Mayor Littlefield declared a conflict of interest and left the dais for discussion and consideration of this item.

COUNCILMEMBER DRAKE MOVED TO APPROVE ITEM 9. COUNCILMAN McCULLAGH SECONDED THE MOTION, WHICH CARRIED 6/0. (RL – COI – A.R.S. 38-501).

REGULAR AGENDA

15. FY2004-2005 Event Funding

Requests:

- A. Approve and adopt the Tourism Development Commission's recommendation from their September 21, 2004 meeting to authorize funds from the bed tax for event promotion in the amount of \$162,156 (individual events and amounts are listed on the Council Action Report).
- B. Authorize and direct the Tourism Development Manager to execute, on behalf of the City, individual agreements with each approved Event Producer.

- C. Approve Resolution No. 6572 authorizing funding for the 2004/05 Matching Event Advertising program and authorizing the Tourism Development Manager to execute individual agreements with each Event Producer.
- D. Discuss City support for the funding of major "community" events, i.e. events that do not meet the criteria for bed tax funding, but are deemed to have value to the community and its residents.

Related Policies, References: Ordinance Nos. 2049, 2702, and 3577 (amended) provide for the expenditure of bed tax funds for promotion of qualified events

Staff Contact(s): David Roderique, Economic Development General Manager, 480-312-7601, droderique@scottsdaleaz.gov; or Kathy Carlisle O'Connor, Tourism Development Manager, 480-312-7057, kcoconnor@scottsdaleaz.gov

Staff presented the information summarized below.

FY2004-2005 Event Funding Recommendations

Benefits of Tourism to Scottsdale

- Tourism industry is one of Scottsdale's largest economic engines
- Generated estimated \$2.6 billion in overall economic impact to the City in 2003
- Accounts for approximately 22% of all 2003 privilege tax collections, or \$27.6 million to the City treasury

Overall Tourism Development Program Objectives

- Advertise and promote Scottsdale's attractiveness as a destination to our target upscale resort visitor.
- Generate room nights in Scottsdale hotels.

Event Funding Program Purpose

- Use Special events as a marketing tool to attract out of town visitors by promoting Scottsdale regionally, nationally and internationally as a highly desirable tourism destination to generate room nights in Scottsdale hotels.

Qualifying Criteria

- Supports one or more "Tourism Theme Driver(s)": Art and Culture, Culinary, Golf, Western, Sports and Recreation
- Regional, national or international marketing exposure
- Evidence of room nights generated in Scottsdale hotels

Program Challenges

- Limited amount of available event support funds
- How to maximize "return on investment"
- Provide support for SCVB's destination marketing program
- Ensure accountability for use of the bed tax funds
- Difficult to measure "results"
- Complex evaluation criteria and funding process
- Difficult to administer

FY2004-2005 Matching Event Advertising Funds Program

- More exposure for Scottsdale outside Maricopa County
- More potential new visitors
- "Dollar-for-dollar match stretches limited funds
- "Approved Uses" support SCVB marketing plan
- Specific use and amount provides accountability
- Advertising is a measurable tool

FY2004-2005 Recommended Events

"Community Events"

- Wonderful "quality of life" events
- Unique to Scottsdale, Popular primarily with residents
- Provide activity for visitors
- Advertised primarily locally to drive "gate"
- Limited or no event advertising outside Maricopa County
- Generate limited if any room nights

Examples of Events That Might Request "Community" Event Funding Support

- Parada del Sol
- New Year's Eve Ultimate Block Party
- Scottsdale Arts Festival
- Downtown Scottsdale ArtWalks
- Scottsdale Culinary Festival

Consider Process for City Support of Qualified Community Events

- Separate "Community Events" fund from the General Fund
- Specified dollar amount
- Produced by entities other than the City
- Criteria and application process to be developed

REQUEST

- Approve the TDC's recommendation for event funding in the amount of \$162,156 for:

Event	Amount
SGA ArtWalks	\$17,500
Scottsdale Classic	\$ 6,317
P.F. Chang Rock 'n Roll Marathon	\$16,884
Sun Country Circuit	\$17,148
Barrett Jackson Classic Car Auction	\$17,500
FBR Open Golf Tournament	\$17,500
Parada del Sol	\$ 2,947
Scottsdale Arabian Horse Show	\$17,500
IMG Men's Tennis Tournament	\$17,500
Fiesta Cluster Dog Show	\$ 3,300
Festival of the West	\$17,464
Scottsdale Culinary Festival	\$10,596
Total	\$162,156

- Authorize and Direct the Tourism Development Manager to execute, on behalf of the City, individual agreements with each approved Event Producer

- Approve Resolution No. 6572 authorizing funding for the 2004/05 Matching Event Advertising Funds program and authorizing the Tourism Development Manager to execute individual agreements with each Event Producer.

Public Testimony was opened.

Stacy Larson, P.O. Box 292, Scottsdale, 85252, spoke on behalf of the Jaycees. She urged additional monetary support, above the proposed amount, for the Parada del Sol to be used for marketing the event.

Public Testimony was closed.

Council discussion focused on:

- The Jaycees' request for additional funding for marketing the Parada del Sol.
- The number of out-of-town visitors generated from the Parada del Sol.
- Future examination of potential funding sources and criteria for community events not meeting the bed tax requirements for this type of funding.

COUNCILMAN ECTON MOVED TO APPROVE THE TOURISM COMMISSION'S RECOMMENDATIONS FOR EVENT FUNDING AND, IN ADDITION, PROVIDE THE PARADA DEL SOL AN ADDITIONAL \$10,000 OUT OF THE RESERVE FUND. COUNCILMEMBER DRAKE SECONDED THE MOTION, WHICH CARRIED 7/0.

16. Zoning Ordinance Text Amendment Regarding Use Permit Revocation Matters

Request: Consider initiation of amendment to text of Zoning Ordinance regarding appropriate body (bodies) to initiate and/or hear use permit revocation matters.

Related Policies, References: City of Scottsdale Ordinance No. 3457

Staff Contacts: Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov; or Patricia J. Boomsma, Senior Assistant City Attorney, pboomsma@scottsdaleaz.gov; 480-312-2405

Staff presented a slide presentation, which is summarized below.

What is a Use Permit?

- City's Zoning Ordinance controls how land within the city is:
 - Developed (height, setbacks, parking, open space, etc.)
 - Types of use and /or activities can take place on the land
 - Based upon a zoning district classification,
- Zoning Ordinance lists allowable uses for land as "permitted" or "subject to Conditional Use Permit".
- Use Permits authorize a particular use of a property
- Only granted with City Council Approval
 - After being considered by the Planning Commission

Use Permits

- Use Permits are tied to the property, not the owner.
- Each Use Permit has an associated case,
 - Which may contain stipulations that restrict use of the property
- Approximately 1200 Use Permit cases
- Sometimes the operation of a Use
 - Creates situations that are detrimental to the neighborhood,
 - Violates the conditions approved in granting the Use Permit.
- Resolution is sought by:
 - Cooperation to correct the conflict
 - Action by Code Enforcement staff to resolve the conflict
 - Revocation of the Use Permit approval

Council questioned staff to obtain additional clarification on current procedures before public testimony was opened.

Public testimony was opened.

Howard Myers, 6631 E. Horned Owl Trail, 85262, urged Council to keep the process as it is currently.

Rick Kidder, 7343 Scottsdale Mall, 85251, spoke on behalf of the Scottsdale Chamber of Commerce. He encouraged Council to reconsider the 2002 revision since the change placed revocation decisions in the hands of Council, which is a political body.

Darlene Petersen, 7327 E. Wilshire Drive, 85257, expressed support for the Council to review the revocation cases.

Graham Kettle, 29651 N. 7th St., 85262, strongly supported the idea that the same group that grants the conditional use permit should be the group to hear the revocation case.

Bob Vairo, 10040 E. Happy Valley Road, #451, 85255, spoke as a representative of the Coalition of Pinnacle Peak. He urged Council to leave the ordinance as it is currently written and to use the revocation process as a last resort.

Ned O'Hearn, 8926 E. Carol Way, 85260, urged Council to table the issue to provide time for the new process to be tested.

Public testimony was closed.

Council discussion focused on:

- The Board of Adjustment's (BOA) inability to modify a use permit. (The BOA is charged with determining if there has or hasn't been a violation of the conditional use permit. If the applicant is found in violation, the applicant would be given an opportunity to bring the violation into compliance or the permit would be revoked. The board could not modify the conditions of the use permit.)

- The revocation hearing must afford the property owner due process; however, the opportunity for public comment is limited regardless of which body hears the revocation case.
- Legal staff's opinion that a conditional use permit, once issued, is more like a license than a vested property right.
- Specialized training for BOA members, which is provided by the Chamber of Commerce.
- Dire predictions that were made when the process was changed in 2002 never materialized.
- Allowing the process adopted in 2002 to be tested before considering amending the procedure.
- Whether Council should have the right to initiate the process to revoke a conditional use permit.

COUNCILMAN MCCULLAGH MOVED TO INITIATE A ZONING ORDINANCE TEXT AMENDMENT THAT WOULD AMEND THE ORDINANCE IN REGARD TO THE USE PERMIT REVOCATION PROCESS TO READ AS IT DID PRIOR TO THE AMENDMENT IN THE YEAR 2002, AND DIRECT STAFF TO DRAFT AN AMENDMENT AND START PUBLIC OUTREACH AND NOTICE PROCESSES. COUNCILMAN LANE SECONDED THE MOTION, (which was denied 3/4 with Councilmembers Drake, Ecton, Osterman, and Littlefield abstaining).

COUNCILMAN OSTERMAN MOVED TO AMEND THE MOTION TO MAKE THE CITY COUNCIL THE DECISION MAKER AND INCLUDE THE BOARD OF ADJUSTMENT AS A RECOMMENDING BODY. COUNCILMAN LANE SECONDED THE AMENDMENT; HOWEVER, HE LATER WITHDREW THE SECOND. THE AMENDMENT DIED FOR LACK OF A SECOND.

COUNCILMAN OSTERMAN ADDED THE FOLLOWING TO THE AMENDMENT: "THE CITY COUNCIL WOULD HAVE THE OPTION TO HEAR ADDITIONAL TESTIMONY TO MAKE THEIR DECISION." AFTER FURTHER DISCUSSION, COUNCILMAN OSTERMAN WITHDREW THIS SECTION OF THE AMENDMENT.

MAYOR MANROSS MOVED TO AMEND THE ORIGINAL MOTION TO ALLOW COUNCIL THE RIGHT TO INITIATE THE REVOCATION PROCESS. COUNCILMAN LANE SECONDED THE AMENDMENT, WHICH CARRIED 4/3 (LITTLEFIELD, ECTON, OSTERMAN).

Following Council discussion and amendments, THE ORIGINAL MOTION WAS DENIED BY A 3/4 VOTE (DRAKE, ECTON, OSTERMAN, LITTLEFIELD).

No additional motions were made.

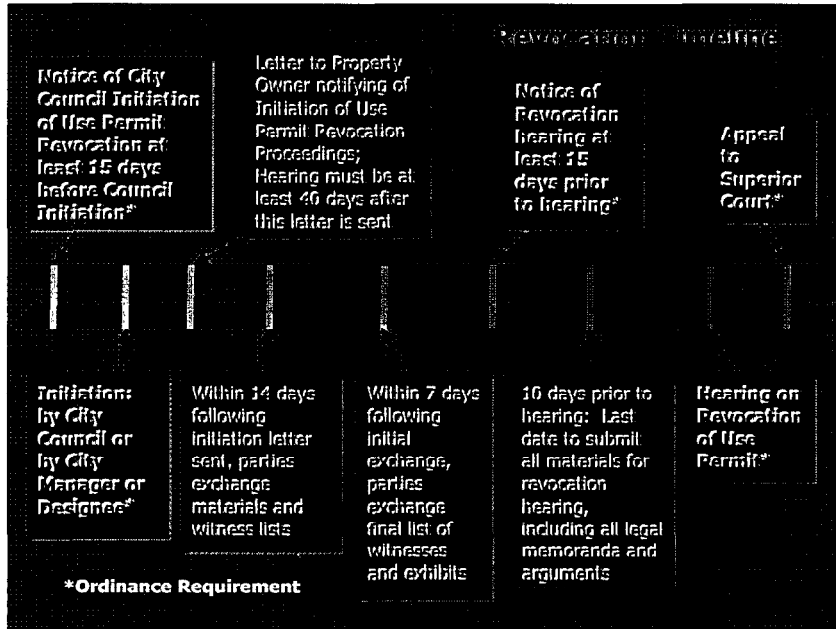
17. Council Procedures for Conditional Use Permit Revocation Process

Request: Consider approval of Resolution No. 6563, adopting procedures to provide due process to property owners and neighbors in use permit revocation cases.

Related Policies, References: Ordinance No. 3457

Staff Contact(s): Joseph R. Bertoldo, City Attorney, 480-312-2405, jbortoldo@scottsdaleaz.gov; Patricia J. Boomsma, Senior Assistant City Attorney, 480-312-2405, pboomsma@scottsdaleaz.gov

Staff presented the following timeline.



Responding to Council's request, staff clarified that the timeline was developed by litigators.

VICE MAYOR LITTLEFIELD MOVED TO ADOPT RESOLUTION 6563.
COUNCILMEMBER DRAKE SECONDED THE MOTION, WHICH CARRIED 7/0.

18. Confirm Initiation of Revocation of Foothills Academy Charter School Conditional Use Permit

Requests:

- Uphold staff decision to initiate revocation of a conditional use permit for Foothills Academy due to violation of the maximum student enrollment stipulated in the City Council approval.
- Set a hearing date for City Council to consider the revocation.

Related Policies, References: 30-UP-2004

Location: 7191 E. Ashler Hills Drive

Staff Contact(s): Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov

Staff presented a slide show, summarized below, to introduce Item 18 for discussion.

**Revocation Process for
Foothills Academy Charter School Conditional Use Permit
Confirm staff decision to initiate revocation of Conditional Use Permit #30-UP-2000**

Background on Use Permits

- Conditional use permits are approved by City Council and may be revoked or amended by City Council
- Staff initiated revocation of the Foothills Academy CUP, and is requesting that City Council confirm this decision
- Tonight's issue is:
 - Whether there is sufficient evidence to set a revocation hearing
 - Not whether the CUP should ultimately be revoked

Background on Foothills Academy

- CUP was approved by City Council on March 6, 2001
- Extensive public input, key issues identified:
 - Parking
 - Traffic, access
 - Noise, Lighting
 - Outdoor activities
- Maximum 250 student enrollment was specified in:
 - Applicant's narrative
 - Staff report
 - Discussion at hearing
 - Stipulation of approval

Background on Foothills Academy

- If enrollment had exceeded 250 students, direct access to Scottsdale Road would have been required by ordinance
- Additional concerns about traffic and safety would have been raised

Enforcement Activity To Date

- June, 2004 – Code Enforcement responded to concerns that enrollment had exceeded 250
- Initial investigation indicated violation existed:
 - Letter from school administration (253 students)
 - AZ Department of Education data (up to 285 students)
- Notice of Violation issued on August 31, 2004
- School given 4 days to reply; indicate how compliance will be achieved
- Letter dated Sept. 2, 2004 from school's attorney
 - Indicates current enrollment of 295 students
 - Indicates intent to apply for amendment to CUP
- Staff calls to school administration confirm 295 enrollment; intent to apply for amendment to CUP
- Sept. 27
 - School indicates that a different attorney will represent them
 - New Attorney and Administration contacted, informed of staff initiation and of upcoming City Council hearing

Recent Discussions

- Applicant's new Attorney has met with Staff in the last week
 - Verified the violation exists and needs resolution
 - Clarified that enrollment is at 271 students
 - Maximum was 276 students (not 295)
 - Working with School Administration
 - To resolve the enrollment violation
 - And address other operational concerns raised
 - Letter submitted this afternoon to City Council (attached)
 - Confirming desire/intent to resolve
 - Requesting 30-60 days continuance to work out resolution

Enforcement Options

- Enforcement can include:
 - Issue Administrative Citation, Civil Citation, or Criminal Charge
 - Establishes penalty but does not resolve violation
 - Initiate CUP revocation*
 - Both of the above

Staff Action/Recommendation

- Foothills Academy was aware of enrollment limit, exceeded maximum anticipating drop off
- Based on evidence and nature of violation, staff decision was to initiate revocation
 - First revocation processed under new ordinance
 - Magnitude of effect on school of revocation warrants that City Council confirm staff decision to initiate
 - If revocation occurs, adequate time should be given to parents, teachers, and school admin. to make other arrangements (eg., revocation effective end of semester or end of school year)

Options for City Council Action

- Decide to not schedule revocation hearing
 - Staff would suspend or withdraw initiation of revocation and continue Code Enforcement process
 - School would either
 - Resolve violation
 - Submit for amendment to existing Use Permit
- Decide to schedule revocation hearing
 - Hearing date no sooner than mid-November
 - Legal notice would occur 15 days prior to hearing
 - City Council decision at hearing would be to:
 - Leave the approved CUP in place
 - Modify the CUP
 - Revoke the CUP
 - Aggrieved party may appeal City Council decision to Superior Court

Charles Huellmantel spoke as the newly appointed legal counsel for the Foothills Academy. He requested a continuance to allow his firm to work with the city to resolve the issues.

Public comment was opened.

Howard Myers, 6631 E. Horned Owl Trail, 85262, expressed his desire to see the issue resolved with the school. He urged Council to "keep the pressure on" until the issue is resolved amicably.

Public comment was closed.

Council discussion focused on:

- The length of time needed by the newly appointed law firm to resolve the issues (30-45 days).
- Continuing the issue to allow time to work with the school's legal counsel.
- Initiating the revocation process to be heard in January as an option to allow time to resolve the issues.

VICE MAYOR LITTLEFIELD MOVED TO SET THE REVOCATION HEARING FOR JANUARY. COUNCILMEMBER DRAKE SECONDED THE MOTION. The second was later withdrawn and the motion DIED FOR LACK OF A SECOND.

Legal counsel advised that setting the revocation hearing in January would be a work intensive solution. Due to the additional information, Councilmember Drake withdrew her second.

COUNCILMAN OSTERMAN MOVED TO CONTINUE ITEM 18 UNTIL DECEMBER 14, 2004. COUNCILMAN LANE SECONDED THE MOTION, WHICH CARRIED 7/0.

19. Consideration of a Citizens' Petition

Request: Subsequent to the submission of the citizens' petition at the September 21, 2004 City Council meeting, staff added this item to the agenda to permit the City Council to consider the petition within the 30 days, as required by the City Charter, Art. 2, Sec. 16. The petition requests two new provisions for appointing citizens to city boards, commissions, and committees.

Related Policies, References: Art. 2, Sec. 16 Scottsdale Charter (consideration of citizen petitions within 30 days); Art. 5, Sec. 1 (granting authority to the City Council to by ordinance create, change, and abolish boards or commissions as in its judgment are required).

Staff Contacts: Jan Dolan, City Manager, jdolan@scottsdaleaz.gov, 480-312-2422; Joe Bertoldo, City Attorney, jbortoldo@scottsdaleaz.gov, 480-312-2405.

Following a brief discussion, Council disagreed with the petition provisions, while agreeing that the process to select board and commission members could be improved. Councilman Ecton noted that he has been working on drafting a revision to the process for some time. He assured citizens that the proposed revision should be forthcoming for Council's consideration in the near future.

Public testimony was opened.

Darlene Petersen, 7327 E. Wilshire Dr., 85257, expressed support for the job the boards and commissions are doing and the current process for appointing members.

George Knowlton, 8701 E. Valley View Rd., 85250, read a list (attached) of suggestions for Council to consider when appointing members to the boards and commissions.

Howard Myers, 6631 E. Horned Owl, 85262, questioned the definition of an activist. He stated his belief that members cannot be categorized and chosen based on their geographic location.

Lyle Wurtz, 6510 E. Palm Lane, 85257, strongly opposed the petition requests.

Public testimony was closed.

No additional action was taken.

PUBLIC COMMENT

Michelle Aubert, 8631 E. Edgemont Ave., 85257, alleged that a member of Council accepted an illegal campaign contribution.

CITY MANAGER'S REPORT - NONE

MAYOR AND COUNCIL ITEMS - NONE

ADJOURNMENT

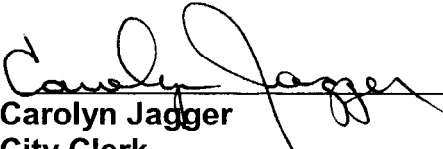
With no further business to discuss, the meeting adjourned at 8:18 P.M.

SUBMITTED BY:



Ann Eyerly
Recording Secretary

REVIEWED BY:




Carolyn Jagger
City Clerk

CERTIFICATE

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular Meeting of the City Council of Scottsdale, Arizona held on the 18th day of October 2004.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this 25th day of October 2004.



CAROLYN JAGGER
City Clerk

WITHEY-ANDERSON & MORRIS

ATTORNEYS AT LAW

October 18, 2004

Hon. Mayor Mary Manross and Members of Council
3939 N Drinkwater Blvd
Scottsdale, AZ 85251

Re: Foothills Academy College Preparatory

Dear Mayor and Council:

The Mayor and City Council is scheduled to discuss a Staff request to initiate the revocation of Foothills Academy Charter School's Conditional Use Permit. This Firm has recently been retained by Foothill Academy to represent them on this issue.

Foothills Academy and I have met over the last week with City Staff to address issues recently raised by members of the community. At the center of the discussion is a condition imposed by Council that limits the number of students who can attend Foothills Academy to an enrollment of 250 students. It is important to note from the outset that the school currently has 271 students attending Foothills Academy. The school is now fully aware of the City's legitimate concern regarding the number of students attending Foothills Academy. We realize that this situation must be addressed immediately to the full satisfaction of the City. Foothill Academy put new rules in place to address issues that have recently been raised and we will continue to meet with Staff to find additional ways that will satisfy the City's concerns while protecting the children who are currently attending the school.

A discussion on the number of students enrolled in Foothills Academy is a topic that benefits from specific student numbers. While Foothills Academy admits to having made some mistakes, the school has always attempted to be a good neighbor, responsible business, and safe place to provide a quality education.

The discussion of the City imposed school enrollment cap of 250 students, and the coinciding Staff Report, raises the issue of Arizona State Department of Education charter regulations. In the case of Foothills Academy, the state approved charter allows for up to 295 students at Foothills Academy. Due to conflicting information the Staff Report incorrectly refers to the 295-enrollment cap figure as the actual number of students enrolled at Foothills Academy. Despite the State's allowance to enroll 295 students at Foothills Academy, the school has never enrolled 295 students as the Staff Report inaccurately suggests. It should be noted that the prior attorney for Foothills Academy erroneously conceded that the school had an enrollment of 295. This school year started with 276 enrolled students and currently the school has 271 students.

Charter schools, such as Foothills Academy, are public schools that receive public funding based on the number of students enrolled at the school. Under the state funding formula, the school is not paid by the number of students who attend the school on the first day of classes. Instead, state regulations recognize that schools regularly see a significant decrease in the number of students after the first day of school. Accordingly, state law requires funding of a school based on student enrollment on the 100th day of classes. Foothills Academy has experienced the same pattern most schools experience of losing a significant number of students after the first day of classes.

Last year, Foothills Academy approached the start of the academic year with 300 **prospective** students. Prospective students are children who have indicated that they would like to attend the school and who have completed some or all of the required enrollment documents. Prospective students often indicate interest to more than one school. On the first day of classes, the school had an enrollment of 262 students. The academic year's final enrollment for 2003-2004 was 253 students. Accordingly, the 2004-2005 academic year started with 5 fewer prospective students with the hope of dipping below the 250 student enrollment number imposed by the City.

The City's desire to impose an enrollment cap of 250 students appears to be derived from concerns for area traffic patterns. In fact, far fewer than 250 students drive to school on any given day. The traffic count for this school is believed to be far below what might be expected for a school of this size. Nine Foothills Academy students have parents who teach at the school and, therefore, drive with their parent. Eighty-seven students currently attend Foothills Academy with one or more siblings. Family oriented traffic alone reduces approximately 80 trips to and from the school. Additionally, the school estimates that nearly 40% of the remaining school students participate in a carpool. On an average day approximately 10 to 20 students are absent from school. Over a dozen of the seniors only attend classes in the morning. To confirm these numbers and to provide a clearer picture on the true impact of the school we have recently engaged a traffic engineer to conduct a study of trip generations for the school.

Members of the community have recently raised new parking concerns. As the City requested, the school arranged to provide additional parking with The Summit shopping center that is located northeast of the school for special events. The school was recently informed that some students are using The Summit for parking on a regular basis. Accordingly, the school has addressed this by enforcing a new rule that will ensure that only students who live in the immediate vicinity of the school are allowed to cross Scottsdale Road. All other students are strictly prohibited from walking across Scottsdale Road or from parking at the Summit. The school immediately hired a person to watch the intersection during school assembly and dismissal times to prevent such activity.

We have been meeting with City Staff and we are working to craft a solution to the situation. Our meetings have already yielded several potential new solutions that will help address the concerns raised. We ask that the Council continue this matter for 30-60 days so

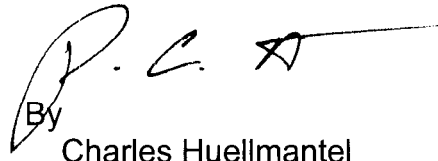
that the City Staff and Foothills Academy can continue to work together to find a solution that will allow the school to meet the intent of the City stipulations. If we are unable to sufficiently meet the City's conditions within this time we will file with the City to amend the conditions of approval in ways that we believe will address the concerns that have been brought forth by neighboring members of the community.

Foothills Academy has been a valued member of the community since it was founded in 1993. The Academy takes great pride in its ability to provide a quality college preparatory education to students wishing to attend school in a safe and familial environment. The Arizona Department of Education recently designated Foothills Academy as an "excelling" school.

Foothills Academy is committed to working with City Staff and neighbors to find solutions to the issues raised so that the school can continue provide a safe and quality education to Foothills Academy students. Thank you for your consideration in this matter.

Sincerely,

WITHEY ANDERSON & MORRIS P.L.C.


By
Charles Huellmantel

PCH/d

Good Evening Mayor and Council.

I'm George Knowlton and I live in Scottsdale.

Boards, Commissions, and Committees are the backbone of city government with City Activists being the balance of power and the watchdogs of city politics.

The purpose of our petition to the Council on September 21st, was to initiate a meaningful dialog and to change the process. It also allowed time for evaluation of how nominees are chosen. Councilman Ecton revealed in the Scottsdale Tribune that many of the appointees are "... pretty much a political appointment..." a process with which he doesn't agree. Councilwoman Drake would like to see a subcommittee review the applications and make suggestions to the council prior to their vote; both good points.

I would like Council to consider the following:

1. According to city records on standing board, commission & committee members, 64% live north of Shea, 36% live south of Shea, and a mere 23% live south of Indian Bend Road. There are some boards with members almost solely from the northern portion of the city.
2. All areas of the city need to be represented by qualified citizens as can best be achieved.
3. To help alleviate this situation, announce all openings via the Utility bills, city website, and local newspapers to allow the public better access on a predetermined day of the month at least 4 weeks prior to the cutoff date for applications.

4. Require a current resume and a separate cover letter explaining the qualifications, goals and interests of the applicant with every application as is done for a job interview.
5. Allow a person to serve on only one standing board, commission or committee at a time with the exception of special one-time committees such as the Fire or the Districting committees.
6. Board, commission, and committee members should be held to similar political speech standards as are city employees.
7. If a person chooses to serve on a different board, they would need to resign their position on their current board first to be considered for another board.
8. Staff to preview applicants and eliminate those that do not meet the requirements for the opening as required by the City Charter and other city regulations.
9. Interview potential appointees only after all applications, including resume and cover letter have been reviewed by the council during a work session so any questions can be eliminated during the interview process.
10. Publish the names of the finalists in the local newspapers allowing the public to send a written note with factual reasons to council in acceptance of, or opposition to, the applicant.
11. No public discussion during a council meeting should be allowed on nominees.
12. Vote on qualified applicants at council meeting.

The above process will eliminate guessing about applicants qualifications, discourage politically motivated applicants, and reduce the list to a manageable size for council's action.

Many people have dropped off of boards or haven't applied because of the politics being played.

There are many qualified citizens who would serve on these boards, commissions or committees if;

- they knew a position was open and,
- if they were assured that it wasn't just a popularity or politically motivated contest.

It's time for a change to the better in this system and it's in your hands as our elected representatives to facilitate that change as soon as possible.

Thank you.....